





COMPARISON OF
THE RENEGOTIATION ACT
BEFORE AND AFTER ITS AMENDMENT BY THE
REVENUE BILL OF 1943
AS PASSED BY THE
HOUSE OF REPRESENTATIVES

SUBMITTED TO THE COMMITTEE ON FINANCE
OF THE UNITED STATES SENATE
BY THE
STAFF OF THE JOINT COMMITTEE ON
INTERNAL REVENUE TAXATION



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CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION,
Washington, November 30, 1943.

HON. WALTER F. GEORGE,
*Chairman, Committee on Finance,
United States Senate.*

DEAR SENATOR: In accordance with your request, I am submitting herewith a comparative print of section 403 (relating to renegotiation or war contracts) of the Sixth Supplemental National Defense Appropriation Act, 1942 (April 28, 1942, c. 247, 56 Stat. 245) as it now exists and as it is proposed to be amended by Title VII of the revenue bill now before the Finance Committee. This print was prepared by Mr. Lynn L. Stratton, of the staff of this committee.

It is hoped that the comparison will be found useful to the Committee on Finance in its consideration of the House bill.

Respectfully yours,

COLIN F. STAM, *Chief of Staff.*

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION,
Washington, November 30, 1943.

Mr. COLIN F. STAM, *Chief of Staff,*
Joint Committee on Internal Revenue Taxation,
Congress of the United States.

DEAR MR. STAM: At your direction, a comparison of section 403 (relating to renegotiation of war contracts) of the Sixth Supplemental National Defense Appropriation Act, 1942 (April 28, 1942, c. 247, 56 Stat. 245) as it now exists and as it is proposed to be amended by Title VII of the House revenue bill of 1943 has been prepared and is submitted herewith.

Unchanged language appears in roman, new language in italic, and repealed language in stricken-through type. Language that is not in fact new is printed in roman, notwithstanding the fact that section 701 (b) of the revenue bill is in form an amendment in full.

The text is preceded by a table citing, and classifying according to subject matter, the changes proposed to be made in the renegotiation provision.

Respectfully yours,

LYNN L. STRATTON.

RENEGOTIATION OF WAR CONTRACTS

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* Of the revenue bill.

RENEGOTIATION OF WAR CONTRACTS

(Section 403, as amended, of the Sixth Supplemental National Defense Appropriation Act, 1942, as proposed to be amended by section 701 (b) of the House revenue bill of 1943)

SEC. 403. (a) For the purposes of this section—

(1) The term "Department" means the War Department, the Navy Department, the Treasury Department, the Maritime Commission, the War Shipping Administration, Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation, and Rubber Reserve Company, respectively.

(2) In the case of the Maritime Commission, the term "Secretary" means the Chairman of such Commission, and in the case of the War Shipping Administration, the term "Secretary" means the Administrator of such Administration, and in the case of Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation, and Rubber Reserve Company, the term "Secretary" means the board of directors of the appropriate corporation.

(3) (A) The terms "renegotiate" and "renegotiation" include ~~the~~ ~~refixing~~ by the Secretary of the Department of the contract price: a determination by agreement or order under this section of the amount of any excessive profits.

(B) The terms "reprice" and "repricing" include a determination by agreement or order under this section of a fair price for performance under a contract or subcontract.

(4) (A) The term "excessive profits" means ~~any amount of a contract or subcontract price which is found as a result of renegotiation to represent excessive profits:~~ the portion of the profits derived from contracts with the Departments and subcontracts which is determined in accordance with this section to be excessive for the work and articles furnished. In determining excessive profits there shall be taken into consideration the following factors:

(i) efficiency of contractor, with particular regard to attainment of quantity and quality production, reduction of costs and economy in the use of raw materials, facilities, and manpower;

(ii) reasonableness of costs and profits, with particular regard to volume of production, and normal pre-war earnings;

(iii) amount and source of public and private capital employed and net worth;

(iv) extent of risk assumed, including the risk incident to reasonable pricing policies;

(v) nature and extent of contribution to the war effort, including inventive and developmental contribution and cooperation with the Government and other contractors in supplying technical assistance;

(vi) character of business, including complexity of manufacturing technique, character and extent of subcontracting, and rate of turnover;

(vii) such other factors the consideration of which the public interest and fair and equitable dealing may require.

(B) The term "profits derived from contracts with the Departments and subcontracts" means the excess of the amount received or accrued under such contracts and subcontracts over the costs paid or incurred with respect thereto. Such costs shall be determined in accordance with the method of cost accounting regularly employed by the contractor in keeping his books, but if no such method of cost accounting has been employed, or if the method so employed does not, in the opinion of the Board or, upon redetermination, in the opinion of The Tax Court of the United States properly reflect such costs, such costs shall be determined in accordance with such method as in the opinion of the Board or, upon redetermination, in the opinion of The Tax Court of the United States does properly reflect such costs. Irrespective of the method employed or prescribed for determining such costs, no item of cost shall be charged to any contract with a Department or subcontract or used in any manner for the purpose of determining such cost, to the extent that in the opinion of the Board or, upon redetermination, in the opinion of The Tax Court of the United States, such item is unreasonable or not properly chargeable to such contract or subcontract. No commission, percentage, brokerage, or contingent fee paid or payable by a contractor with a Department to any person for or in connection with the soliciting or securing by such person of a contract with a Department shall be allowed as an item of cost, unless such person is a bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business. Except as otherwise provided in the foregoing provisions of this paragraph, all items of the character allowed as deductions and exclusions under Chapters 1 and 2 E of the Internal Revenue Code (excluding taxes measured by income) shall, to the extent allocable to such contracts and subcontracts, be allowed as items of cost, but in determining the amount of excessive profits to be eliminated proper adjustment shall be made on account of the taxes so excluded, other than Federal taxes, which are attributable to the portion of the profits which are not excessive.

(5) The term "subcontract" means—

(i) (A) any purchase order or agreement (other than a contract with a Department) to make or furnish, or to perform ~~all of~~ any part of the work, ~~or to make or furnish any article,~~ required for the performance of any other contract or subcontract or making or furnishing of, a contract item or a component article. For the purposes of this subparagraph—

(i) A "contract item" means any article, work, services, building, structure, improvement, or facility contracted for by a Department;

(ii) A "component article" means any article which is to be incorporated in or as a part of a contract item.

(ii) (B) ~~a~~ Any contract or arrangement (other than a contract or arrangement between two contracting parties, one of which parties is found by the Secretary Board to be a bona fide executive officer, partner, or full-time employee of the other contracting party), ~~(A)~~ (i) any amount payable under which is contingent upon the procurement of a contract or contracts with a Department or of a subcontract or subcontracts ~~thereunder~~, or determined with reference to the amount of such a contract or subcontract or such contracts or subcontracts, or ~~(B)~~ (ii) under which any part of the services performed or to be performed consists of the soliciting, attempting to procure, or procuring a contract

or contracts with a Department or a subcontract or subcontracts ~~thereunder~~: *Provided*, That nothing in this sentence shall be construed (1) to affect in any way the validity or construction of provisions in any contract with a Department or any subcontract ~~thereunder~~, heretofore at any time or hereafter made, prohibiting the payment of contingent fees or commissions; or (2) to restrict in any way the authority of the Secretary or the Board to determine the nature or amount of selling expenses under subcontracts as defined in (ii) ~~herein~~ *this subparagraph*, as a proper element of the contract price or as a reimbursable item of cost, under a contract with a Department or a subcontract ~~thereunder~~.

(6) The term "article" includes any material, part, assembly, machinery, equipment, or other personal property.

For the purposes of subsections (d) and (e) of this section, the term "contract" includes a subcontract and the term "contractor" includes a subcontractor.

(7) The term "standard commercial article" means an article—

(A) which is not specially made to specifications furnished by a Department or by another contractor or subcontractor,

(B) which is identical in every material respect with an article which was manufactured and sold, and in general civilian, industrial, or commercial use prior to January 1, 1940,

(C) which is identical in every material respect with an article which is manufactured and sold, as a competitive product, by more than one manufacturer, or which is an article of the same kind and having the same use or uses as an article manufactured and sold, as a competitive product, by more than one manufacturer, and

(D) for which a maximum price has been established and is in effect under the Emergency Price Control Act of 1942, as amended, or under the Act of October 2, 1942, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes", or which is sold at a price not in excess of the January 1, 1941, selling price.

An article made in whole or in part of substitute materials but otherwise identical in every material respect with the article with which it is compared under subparagraphs (B) and (C) shall be considered as identical in every material respect with such article with which it is so compared.

(8) The term "fiscal year" means the taxable year of the contractor or subcontractor under Chapter 1 of the Internal Revenue Code.

(9) The terms "received or accrued" and "paid or incurred" shall be construed according to the method of accounting employed by the contractor or subcontractor in keeping his books.

(b) Subject to subsection (i), the Secretary of each Department is authorized and directed to insert in any each contract for an amount in excess of \$100,000, hereafter made by such Department thirty days or more after the date of the enactment of the Revenue Act of 1943, a provision under which the contractor agrees—

(1) a provision for the repricing, and to the elimination of excessive profits through renegotiation of the contract price at a period or periods when, in the judgment of the Secretary, the profits can be determined with reasonable certainty;

(2) a provision for the retention that there may be retained by the United States from amounts otherwise due the contractor, or

for the repayment by him that he will repay to the United States, if paid to him, of any excessive profits not eliminated through reductions in the contract price, or otherwise, as the Secretary may direct;

(3) a provision requiring the contractor to that he will insert in each subcontract described in subsection (a) (5) (ii) and in each subcontract for an amount in excess of \$100,000 described in subsection (a) (5) (i) made by him under such contract (i) a provision for the renegotiation by such Secretary and the subcontractor of the contract price of the subcontract at a period or periods when, in the judgment of the Secretary, the profits can be determined with reasonable certainty; under which the subcontractor agrees—

(A) to repricing, and to the elimination of excessive profits through renegotiation;

(ii) (B) a provision for the retention that there may be retained by the contractor for the United States of the amount of any reduction in the contract price of any subcontract pursuant to its renegotiation hereunder from amounts otherwise due the subcontractor, or for the repayment by that the subcontractor will repay to the United States, if paid to him, of any excessive profits from such, or any amount in excess of the fair price under the subcontract paid to him and not eliminated through reductions in the contract price or otherwise, as the Secretary may direct determined as a result of repricing; and

(iii) (C) a provision for relieving that the contractor from any shall be relieved of all liability to the subcontractor on account of any amount so retained by the contractor, or so repaid by the subcontractor to the United States; and;

(iv) (D) in the discretion of the Secretary, a provision requiring any subcontractor to that he will insert in any each subcontract made by him under such subcontract, provisions corresponding to those of subparagraphs (3) and (4) of this subsection (b) (A), (B), and (C) and to those of this subparagraph; and

(4) a provision for the retention that there may be retained by the United States from amounts otherwise due the contractor, or for repayment by him that he will repay to the United States, as the Secretary may direct, of the amount of any reduction in the contract price of any subcontract under such contract; amounts which under paragraph (3) (B) the contractor is directed, pursuant to clause (3) of this subsection, to withhold from payments otherwise due the a subcontractor and which are actually unpaid at the time the contractor receives such direction.

The provision for the renegotiation of the contract price, in the discretion of the Secretary, (i) may fix the period or periods when or within which renegotiation shall be had; and (ii) if in the opinion of the Secretary the provisions of the contract or subcontract are otherwise adequate to prevent excessive profits; may provide that renegotiation shall apply only to a portion of the contract or subcontract or shall not apply to performance during a specified period or periods and may also provide that the contract price in effect during any such period or periods shall not be subject to renegotiation.

The obligations assumed by the contractor or subcontractor under paragraph (1) or (3) (A), as the case may be, agreeing to the elimination of excessive profits through renegotiation shall be binding on him only if the contract or subcontract, as the case may be, is subject to subsection (c). A provision inserted in a contract or subcontract, which recites in substance that the contract or subcontract shall be deemed to contain all the provisions required by this subsection shall be sufficient compliance with this subsection. Whether or not there is inserted in a contract with a Department or subcontract, to which this subsection is applicable, the provisions required by this subsection, such contract or subcontract, as the case may be, shall be considered as having been made subject to this subsection in the same manner and to the same extent as if such provisions had been inserted.

(c) (1) Whenever, in the opinion of the Secretary of a Department Board, the profits realized or likely to be realized from any amounts received or accrued under contracts with such the Departments, and or from any subcontracts thereunder whether or not made by the contractor, may be reflect excessive profits, the Secretary is authorized and directed to require Board shall give to the contractor or subcontractor to renegotiate the contract price, as the case may be, reasonable notice of the time and place of a conference to be held with respect thereto. The mailing of such notice by registered mail to the contractor or subcontractor shall constitute the commencement of the renegotiation proceeding. At the conference, which may be adjourned from time to time, the Board shall endeavor to make a final or other agreement with the contractor or subcontractor with respect to the elimination of excessive profits realized or likely to be realized, and with respect to such other matters relating thereto as the Board deems advisable. If the Board does not make such an agreement, it shall issue and enter an order determining the amount, if any, of such excessive profits, and forthwith give notice thereof by registered mail to the contractor or subcontractor. In the absence of the filing of a petition with The Tax Court of the United States under the provisions of and within the time limit prescribed in subsection (e) (1), such order shall be final and conclusive and shall not be subject to review or redetermination by any court or other agency. When the contractor or subcontractor holds two or more contracts or subcontracts, the Secretary in his discretion, may renegotiate to eliminate excessive profits on some or all of such contracts and subcontracts as a group without separately renegotiating the contract price of each contract or subcontract.

The Board shall exercise its powers with respect to the aggregate of the amounts received or accrued during the fiscal year by a contractor or subcontractor under contracts with the Departments and subcontracts, and not separately with respect to amounts received or accrued under separate contracts with the Departments or subcontracts, except that the Board may exercise such powers separately with respect to amounts received or accrued by the contractor or subcontractor under any one or more separate contracts with the Departments or subcontracts at the request of the contractor or subcontractor. Whenever the Board makes a determination with respect to the amount of excessive profits, whether such determination is made by order or is embodied in an agreement with the contractor or subcontractor, it shall, at the request of the contractor or subcontractor, as the case may be, prepare and furnish such contractor or subcontractor with a statement of such determination, of the facts used as a basis therefor, and of its reasons for such determination. Such statement

shall not be used as evidence or otherwise considered by The Tax Court of the United States in connection with its determination of excessive profits.

(2) Upon ~~renegotiation~~ the making of an agreement, or the entry of an order, under paragraph (1) by the Board, or the entry of an order under subsection (e) by The Tax Court of the United States, determining excessive profits, the Secretary is ~~authorized and directed~~ Board shall forthwith authorize and direct the Secretaries or any of them to eliminate ~~any such~~ excessive profits under such contract or subcontract (i) (A) by reductions in the contract price of the contract or subcontract in the amounts otherwise payable to the contractor under contracts with the Departments and subcontracts, or by other revision in its of their terms; or (ii) (B) by withholding, from amounts otherwise due to the contractor or subcontractor, any amount of such excessive profits; or (iii) (C) by directing a contractor to withhold for the account of the United States, from amounts otherwise due to the a subcontractor, any amount of such excessive profits under the of such subcontractor; or (iv) (D) by recovery from the contractor or subcontractor, through repayment, credit, or suit, of any amount of such excessive profits actually paid to him; or (v) (E) by any combination of these methods, as the Secretary is deemed desirable. The Secretary may bring ~~a~~Actions on behalf of the United States may be brought in the appropriate courts of the United States to recover from such contractor or subcontractor, any amount of such excessive profits actually paid to him and not withheld or eliminated by some other method under this subsection. The surety under a contract or subcontract shall not be liable for the repayment of any excessive profits thereon. Each contractor and subcontractor is hereby indemnified by the United States against all claims by any subcontractor on account of amounts withheld from such subcontractor pursuant to this paragraph or pursuant to subsection (f). All money recovered by way of repayment or suit under this subsection shall be covered into the Treasury as miscellaneous receipts. Upon the withholding of any amount of excessive profits or the crediting of any amount of excessive profits against amounts otherwise due a contractor, the Secretary shall transfer to the Treasury, from appropriations of his Department, to the credit of miscellaneous receipts an amount equal to the amount so withheld or credited by him.

(3) In determining the excessiveness of profits realized or likely to be realized from any contract or subcontract, the Secretary shall recognize the properly applicable exclusions and deductions of the character which the contractor or subcontractor is allowed under chapter 1 and chapter 2E of the Internal Revenue Code. In determining the amount of any excessive profits to be eliminated hereunder the Secretary shall allow the contractor or subcontractor credit for Federal income and excess profits taxes as provided in section 3806 of the Internal Revenue Code. For the purposes of this paragraph the term "contractor" includes a subcontractor.

(3) No proceeding to determine the amount of excessive profits shall be commenced by the Board more than one year after the close of the fiscal year in which such excessive profits were received or accrued, or more than one year after the statements required under paragraph (5) are filed with the Board, whichever is the later, and if such proceeding is not so commenced, then upon the expiration of one year following the close of such fiscal year, or one year following the date upon which such statements are so filed, whichever is the later, all liabilities of the contractor or

subcontractor for excessive profits received or accrued during such fiscal year shall thereupon be discharged. If an agreement or order determining the amount of excessive profits is not made within one year following the commencement of the renegotiation proceeding, then upon the expiration of such one year all liabilities of the contractor or subcontractor for excessive profits with respect to which such proceeding was commenced shall thereupon be discharged, except that (A) if an order is made within such one year by the Secretary (or an officer or agency designated by the Secretary) pursuant to a delegation of authority under subsection (d) (4), such one-year limitation shall not apply to review of such order by the Board, and (B) such one-year period may be extended by mutual agreement.

(4) Upon renegotiation pursuant to *For the purposes of this section the Secretary Board may make such final or other agreements with a contractor or subcontractor for the elimination of excessive profits and for the discharge of any liability for excessive profits under this section, as the Secretary deems desirable.* Such agreements may cover such past and future period or periods, may apply to such contract or contracts of the contractor or subcontractor, and may contain such terms and conditions, as the Secretary Board deems advisable. Any such agreement shall be final and conclusive according to its terms; and except upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, (i) (A) such agreement shall not for the purposes of this section be reopened as to the matters agreed upon, and shall not be modified by any officer, employee, or agent of the United States; and (ii) (B) such agreement and any determination made in accordance therewith shall not be annulled, modified, set aside, or disregarded in any suit, action, or proceeding.

(5) *Any (A) Every contractor or and subcontractor who holds contracts or subcontracts, to which the provisions of this subsection are applicable, shall, at such time or times and in such form and detail, as the Board may by regulations prescribe, may file with the Secretaries of all the Departments concerned Board statements of actual costs of production and such other financial statements for any prior fiscal year or years of such contractor or subcontractor, in such form and detail, as the Secretaries shall Board may by regulations prescribe by joint regulation. Within one year after the filing of such statements; or within such shorter period as may be prescribed by such joint regulation, the Secretary of a Department may give the contractor or subcontractor written notice, in form and manner to be prescribed in such joint regulation, that the Secretary is of the opinion that the profits realized from some or all of such contracts or subcontracts may be excessive, and fixing a date and place for an initial conference to be held within sixty days thereafter. If such notice is not given and renegotiation commenced by the Secretary within such sixty days the contractor or subcontractor shall not thereafter be required to renegotiate to eliminate excessive profits realized from any such contract or subcontract during such fiscal year or years and any liabilities of the contractor or subcontractor for excessive profits realized during such period shall be thereby discharged.*

Any person who willfully fails or refuses to furnish any statement required of him under this subsection, or who knowingly furnishes any such statement containing information which is false or misleading in any material respect, shall, upon conviction thereof, be punished by a

fine of not more than \$10,000 or imprisonment for not more than two years, or both.

(B) For the purposes of this section the Board shall have the same powers with respect to any such contractor or subcontractor that any agency designated by the President to exercise the powers conferred by title XIII of the Second War Powers Act, 1942, has with respect to any contractor to whom such title is applicable. In the interest of economy and the avoidance of duplication of inspection and audit, the services of the Bureau of Internal Revenue shall, upon request of the Board and the approval of the Secretary of the Treasury, be made available to the extent determined by the Secretary of the Treasury for the purpose of making examinations and audits under this section.

(6) This subsection (e) shall be applicable to all contracts and subcontracts hereafter made and to all contracts and subcontracts heretofore made, to the extent of amounts received or accrued thereunder in any fiscal year ending after June 30, 1943, whether such contracts or subcontracts were made on, prior to, or after the date of the enactment of the Revenue Act of 1943, and whether or not such contracts or subcontracts contain a renegotiation or recapture clause the provisions required under subsection (b), unless (i) final payment pursuant to such contract or subcontract was made prior to April 28, 1942; or (ii) (A) the contract or subcontract provides otherwise pursuant to subsection (b) or (i), or is exempted under subsection (i), of this section 403; or (iii) (B) the aggregate sales by and of the amounts payable received or accrued in such fiscal year by to the contractor or subcontractor and all persons under the control of or controlling or under common control with the contractor or subcontractor, under contracts with the Departments and subcontracts thereunder (including those described in clauses (i) and (ii) of this subsection (6) (A), but excluding subcontracts described in subsection (a) (5) ii (B)) do not exceed; or in the opinion of the Secretary will not exceed, \$100,000; \$500,000 and under subcontracts described in subsection (a) (5) ii (B) do not exceed; or in the opinion of the Secretary will not exceed, \$25,000, for the such fiscal year of such contractor or subcontractor. No renegotiation of the contract price pursuant to any provision therefor, or otherwise, shall be commenced by the Secretary more than one year after the close of the fiscal year of the contractor or subcontractor within which completion or termination of the contract or subcontract, as determined by the Secretary, occurs. If such fiscal year is a fractional part of twelve months, the \$500,000 amount and the \$25,000 amount shall be reduced to the same fractional part thereof for the purposes of this paragraph.

(d) In renegotiating a contract price or determining excessive profits for the purposes of this section, the Secretaries of the respective Departments shall not make any allowance for any salaries, bonuses, or other compensation paid by a contractor to its officers or employees in excess of a reasonable amount, nor shall they make allowance for any excessive reserves set up by the contractor or for any costs incurred by the contractor which are excessive and unreasonable. For the purpose of ascertaining whether such unreasonable compensation has been or is being paid, or whether such excessive reserves have been or are being set up; or whether any excessive and unreasonable costs have been or are being incurred, each such Secretary shall have the same powers with respect to any such contractor that an

agency designated by the President to exercise the powers conferred by title XIII of the Second War Powers Act, 1942, has with respect to any contractor to whom such title is applicable. In the interest of economy and the avoidance of duplication of inspection and audit, the services of the Bureau of Internal Revenue shall, upon request of each such Secretary and the approval of the Secretary of the Treasury, be made available to the extent determined by the Secretary of the Treasury for the purposes of making examinations and determinations with respect to profits under this section. (1) *There is hereby created a War Contracts Price Adjustment Board (in this section called the "Board"), which shall consist of five members. One of the members shall be an officer or employee of the Department of War and shall be appointed by the Secretary of War, one shall be an officer or employee of the Department of the Navy and shall be appointed by the Secretary of the Navy, one shall be an officer or employee of the Department of the Treasury and shall be appointed by the Secretary of the Treasury, one shall be an officer or employee of the United States Maritime Commission or the War Shipping Administration and shall be appointed jointly by the Chairman of the United States Maritime Commission and the Administrator of the War Shipping Administration, and one shall be an officer or employee of the Reconstruction Finance Corporation and shall be appointed by the Chairman of the board of directors of the Reconstruction Finance Corporation. The members of the Board shall not receive additional compensation for service on the Board but shall be allowed and paid necessary travel and subsistence expenses (or a per diem in lieu thereof) while away from their official station on duties of the Board. They shall elect a chairman from among their members. The Board shall have a seal which shall be judicially noticed.*

(2) *The principal office of the Board shall be in the District of Columbia, but it or any division thereof may meet and exercise its powers at any other place within the United States. The Board may establish such number of field offices throughout the United States as it deems necessary to expedite the work of the Board. Three members of the Board shall constitute a quorum, and any power, function, or duty of the Board may be exercised or performed by a majority of the members present if the members present constitute at least a quorum.*

(3) *The Board is authorized, subject to the civil-service laws and the Classification Act of 1923, as amended, to employ and fix the compensation of such officers and employees as it deems necessary to assist it in carrying out its duties under this section. The Board may, with the consent of the head of the Department, agency, or instrumentality of the United States concerned, utilize the services of any officers or employees of the United States, and reimburse such Department, agency, or instrumentality for the services so utilized.*

(4) *The Board may delegate in whole or in part any power, function, or duty (except the power, function, and duty to review orders determining excessive profits) to the Secretary of a Department, and any power, function, or duty so delegated may be delegated in whole or in part by the Secretary to such officers or agencies of the United States as he may designate, and he may authorize successive redelegations of such powers, functions, and duties.*

(5) *The chairman of the Board may from time to time divide the Board into divisions of one or more members, assign the members of the Board*

thereto, and in case of a division of more than one member, designate the chief thereof. The Board may also, by regulations or otherwise, determine the character of cases to be conducted initially by the Board through an officer or officers of, or utilized by, the Board, the character of cases to be conducted initially by the various officers and agencies authorized to exercise powers of the Board pursuant to paragraph (4), the character of cases to be conducted initially by the various divisions of the Board, and the character of cases to be conducted initially by the Board itself, but any contractor or subcontractor aggrieved by an order of any such officer, agency, or division shall, upon request therefor made within such time as the Board may by regulation prescribe, be entitled to a review thereof by the Board. The Board may review any determination by any such officer, agency, or division on its own motion, and may by regulations provide that in the absence of a request for review of an order of any such officer, agency, or division within the time so prescribed the order of such officer, agency, or division shall be deemed the order of the Board. Upon any review by the Board the Board may determine as the amount of excessive profits an amount either less than, equal to, or greater than that determined by the officer, agency, or division whose action is so reviewed.

(e) In addition to the powers conferred by existing law, the Secretary of each Department shall have the right to demand of any contractor who holds contracts with respect to which the provisions of this section are applicable, statements of actual costs of production and such other financial statements, at such times and in such form and detail, as such Secretary may require. Any person who willfully fails or refuses to furnish any statement required of him under this subsection, or who knowingly furnishes any such statement containing information which is false or misleading in any material respect, shall, upon conviction thereof, be punished by a fine of not more than \$10,000 or imprisonment for not more than two years, or both. The powers conferred by this subsection shall be exercised in the case of any contractor by the Secretary of the Department holding the largest amount of such contracts with such contractor, or by such Secretary as may be mutually agreed to by the Secretaries concerned.

(1) Any contractor or subcontractor aggrieved by an order of the Board determining the amount of excessive profits received or accrued by such contractor or subcontractor, or by an order of the Secretary under subsection (f) determining a fair price, may, within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the mailing of the notice of such order under subsection (c) (1), file a petition with The Tax Court of the United States for a redetermination thereof. Upon such filing such court shall have exclusive jurisdiction, by order, to finally determine the amount, if any, of such excessive profits received or accrued by the contractor or subcontractor, or the fair price, as the case may be, and such determination shall not be reviewed or redetermined by any court or agency. The court may determine as the amount of excessive profits an amount either less than, equal to, or greater than that determined by the Board, and may determine a fair price either less than, equal to, or greater than that determined by the Secretary. A proceeding before The Tax Court to finally determine the amount, if any, of excessive profits, or to determine the fair price, shall not be treated as a proceeding to review the determination of the Board or the Secretary, as the case may be, but shall be treated as a proceeding de novo. For the purposes of this subsection the court shall have the same powers and duties,

insofar as applicable, in respect of the contractor, the subcontractor, the Board and the Secretary, and in respect of the attendance of witnesses and the production of papers, notice of hearings, hearings before divisions, review by The Tax Court of decisions of divisions, stenographic reporting, and reports of proceedings, as such court has under sections 1110, 1111, 1113, 1114, 1115 (a), 1116, 1117 (a) and (b), 1118, 1120, and 1121 of the Internal Revenue Code in the case of a proceeding to redetermine a deficiency. In the case of any witness for the Board or Secretary, the fees and mileage, and the expenses of taking any deposition shall be paid out of appropriations of the Board or Department available for that purpose, and in the case of any other witnesses, shall be paid, subject to rules prescribed by the court, by the party at whose instance the witness appears or the deposition is taken. The filing of a petition under this subsection shall not operate to stay the execution of the order of the Board under subsection (c) (2), or an order of the Secretary under subsection (f).

(2) Any contractor or subcontractor (excluding a subcontractor described in subsection (a) (5) (B)) aggrieved by a determination of the Secretary made prior to the date of the enactment of the Revenue Act of 1943, with respect to a fiscal year ending before July 1, 1943, as to the existence of excessive profits, whether or not such determination is embodied in an agreement with the contractor or subcontractor, may, within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the date of the enactment of the Revenue Act of 1943, file a petition with the Tax Court of the United States for a redetermination thereof, and any such contractor or subcontractor aggrieved by a determination of the Secretary made on or after the date of the enactment of the Revenue Act of 1943, with respect to any such fiscal year, as to the existence of excessive profits, which is not embodied in an agreement with the contractor or subcontractor, may, within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the date of such determination, file a petition with the Tax Court of the United States for a redetermination thereof. Upon such filing such court shall have the same jurisdiction, powers, and duties, and the proceeding shall be subject to the same provisions, as in the case of a petition filed with the court under paragraph (1), except that the amendments made to this section by the Revenue Act of 1943 (other than the amendment inserting this paragraph) shall not apply. If the determination of the Secretary is embodied in an agreement with the contractor or subcontractor, neither such agreement nor the amount agreed upon as excessive profits shall be taken into consideration by the court in its determination of the amount of excessive profits.

(f) Subject to any regulations which the President may prescribe for the protection of the interests of the Government, the authority and discretion herein conferred upon the Secretary of each Department may be delegated in whole or in part by him to such individuals or agencies as he may designate in his Department, or in any other Department with the consent of the Secretary of that Department, and he may authorize such individuals or agencies to make further delegations of such authority and discretion. (1) Whenever, in the opinion of the Secretary of a Department, the price under any contract with such Department or subcontract which affects such Department exceeds a fair price, the Secretary may require the contractor or subcontractor to negotiate to fix a fair price thereunder. If an agreement is not reached, the Secretary by order may fix the price which he determines

to be a fair price for performance under such contract or subcontract after the date of the order. Any such agreement or order may prescribe the period during which the price so fixed shall be effective, and may contain such other terms and conditions as the Secretary deems appropriate. In determining a fair price under this subsection, the Secretary shall take into consideration all of the factors to be considered in determining excessive profits under subsection (a) (4) (A) of this section, and such other factors as he deems appropriate.

(2) Upon the making of an agreement or order under this subsection, the Secretary may—

(A) withhold from amounts otherwise payable to the contractor or subcontractor any portion of the contract price in excess of the price so fixed, or

(B) direct the contractor or another subcontractor to withhold for the account of the United States from amounts otherwise due the subcontractor any portion of the contract price in excess of the price so fixed.

(3) Where a contractor or subcontractor holds two or more contracts or subcontracts the Secretary, in his discretion, may exercise the authority conferred by this subsection with respect to some or all of such contracts and subcontracts as a group.

(4) The authority and discretion herein conferred upon the Secretary of each Department may be delegated in whole or in part by him to such individuals or agencies as he may designate in his Department, or in any other Department with the consent of the Secretary of that Department, and he may authorize such individuals or agencies to make further delegations of such authority and discretion.

(g) If any provision of this section or the application thereof to any person or circumstance is held invalid, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby.

(h) ~~This section shall remain in force during the continuance of the present war and for three years after the termination of the war, but no court proceedings brought under this section shall abate by reason of the termination of the provisions of this section. This section shall not apply to any contract with a Department, or any subcontract, made after the date proclaimed by the President as the date of the termination of hostilities in the present war, or the date specified in a concurrent resolution of the two Houses of Congress as the date of such termination, whichever is the earlier.~~

(i) (1) The provisions of this section shall not apply to—

(i) (A) any contract by a Department with any other department, bureau, agency, or governmental corporation of the United States or with any Territory, possession, or State or any agency thereof or with any foreign government or any agency thereof; or

(ii) (B) any contract or subcontract for the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined, or treated beyond the first form or state suitable for industrial use; ~~and the Secretaries are authorized by joint regulation, to define, interpret, and apply this exemption; or~~

(C) any contract or subcontract for an agricultural commodity in its raw or natural state, or if the commodity is not customarily sold

or has not an established market in its raw or natural state, in the first form or state, beyond the raw or natural state, in which it is customarily sold or in which it has an established market, or any contract or subcontract for canned, bottled, or packed fruits or vegetables (or their juices) which are customarily canned, bottled, or packed in the season in which they are harvested. The term "agricultural commodity" as used herein shall include but shall not be limited to—

(i) commodities resulting from the cultivation of the soil such as grains of all kinds, fruits, nuts, vegetables, hay, straw, cotton, tobacco, sugar cane, and sugar beets.

(ii) saps and gums of trees;

(iii) animals such as cattle, hogs, poultry, and sheep, fish and other marine life, and the produce of live animals, such as wool, eggs, milk and cream; or

(D) any contract or subcontract with an organization exempt from taxation under section 101 (6) of the Internal Revenue Code; or

(E) any subcontract, directly or indirectly under a contract or subcontract exempted from the provisions of this section, or to which this section does not apply, by reason of this paragraph.

(2) The Board is authorized by regulation to interpret and apply the exemptions provided for in paragraph (1) (A), (B), (C), and (E), and interpret and apply the definition contained in subsection (a) (7).

(3) In the case of a contractor or subcontractor who produces or acquires the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, and processes, refines, or treats such a product to or beyond the first form or state suitable for industrial use, or who produces or acquires an agricultural product and processes, refines, or treats such a product to or beyond the first form or state in which it is customarily sold or in which it has an established market, the Board shall prescribe such regulations as may be necessary to give such contractor or subcontractor a cost allowance substantially equivalent to the amount which would have been realized by such contractor or subcontractor if he had sold such product at such first form or state.

(2) (4) The Secretary of a Department Board is authorized, in his its discretion, to exempt from some or all of the provisions of this section—

(i) (A) any contract or subcontract to be performed outside of the territorial limits of the continental United States or in Alaska;

(ii) (B) any contracts or subcontracts under which, in the opinion of the Secretary Board, the profits can be determined with reasonable certainty when the contract price is established, such as certain classes of agreements for personal services, for the purchase of real property, perishable goods, or commodities the minimum price for the sale of which has been fixed by a public regulatory body, of leases and license agreements, and of agreements where the period of performance under such contract or subcontract will not be in excess of thirty days; and

(iii) (C) a portion of any contract or subcontract or performance thereunder during a specified period or periods, if in the opinion of the Secretary Board, the provisions of the contract are otherwise adequate to prevent excessive profits;

(D) any contract or subcontract for the making or furnishing of a standard commercial article, if, in the opinion of the Board, normal competitive conditions affecting the sale of such article exist;

(E) any other contract or subcontract, if, in the opinion of the Board, competitive conditions affecting the making of such contract or subcontract are such as are likely to result in effective competition with respect to the contract or subcontract price; and

(F) any subcontract or group of subcontracts not otherwise exempt from the provisions of this section, if, in the opinion of the Board, it is not administratively feasible in the case of such subcontract or in the case of such group of subcontracts to determine and segregate the profits attributable to such subcontract or group of subcontracts from the profits attributable to activities not subject to renegotiation.

The Secretary Board may so exempt contracts and subcontracts both individually and by general classes or types.

(j) Nothing in sections 109 and 113 of the Criminal Code (U. S. C., title 18, secs. 198 and 203) or in section 190 of the Revised Statutes (U. S. C., title 5, sec. 99) shall be deemed to prevent any person appointed by the Secretary of a Department for intermittent and temporary employment in such Department by reason of service in a Department or the Board during the period (or a part thereof) beginning May 27, 1940, and ending six months after the termination of hostilities in the present war, as proclaimed by the President, from acting as counsel, agent, or attorney for prosecuting any claim against the United States: Provided, That such person shall not prosecute any claim against the United States (1) which arises from involving any subject matter directly connected with which such person is was so employed, or (2) during the period such person is engaged in intermittent and temporary employment in a Department.

(k) All the provisions of Nothing in this section shall be construed to apply to Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation, and Rubber Reserve Company limit or restrict any authority or discretion of the Secretary of a Department under the provisions of any other law.

(l) This section may be cited as the "Renegotiation Act".

Section 701 of the revenue bill of 1943, as passed by the House, is entitled "Renegotiation of War Contracts".

Subsection (a) of that section reads as follows:

"TERMS USED.—Terms used in this section shall have the same meaning as when used in section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942."

Subsection (b) amends section 403, as amended, of the Sixth Supplemental National Defense Appropriation Act, 1942, in full.

Subsection (c) contains technical amendments to section 3806 (a) (1) (B) and (C); and to section 3806 (b) (1) and (2) of the Internal Revenue Code.

Subsection (d) reads as follows:

“EFFECTIVE DATE.—The amendments made by subsection (b) shall be effective only with respect to the fiscal years ending after June 30, 1943, except that (1) the amendment inserting subsection (b) in section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942, shall be effective thirty days after the date of the enactment of this Act, and (2) the amendments adding subsections (e) (2) and (f) to said section 403 shall be effective from the date of the enactment of this Act, and (3) the amendments inserting subsections (i) (1) (C) and (l) shall be effective as if such subsections had been a part of section 403 on the date of its enactment.”



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